FILED
ENTERED
RECEIVED
SERVED ON
COUNSEL/PARTIES OF RECORD
APR - 7 2015
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: DEPUTY

Barry Michaels
43 Diamond Run Street
Las Vegas, Nevada 89148
In Pro Se
(702) 415-0905
nevadaonly@yahoo.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

Barry Michaels Plaintiff, vs. Florida Coastal School of Law (a Delaware Corporation) Defendant,	**2:15-cv-00642-GMN-NJK** **COMPLAINT** DEMAND FOR JURY TRIAL

I JURISDICTION:

This Court has subject jurisdiction in accordance with 28 U.S. Code § 1332 (a)(1) See: the "**Minimum Contact Rule** set forth by the **U.S. Supreme Court** in Walden v. Fiore, 134 S.Ct. (2014), **Nevada Supreme Court** holding in Consipio Holding BV v. Carlberg 128 Nev. Adv. Op. (2012), and NRS 14.065 **Nevada's Long Arm Statute.**

II VENUE

Venue is proper in accordance 28 U.S. Code § 1391(b)(2)

III PARTIES

1. Plaintiff, Barry Michaels is now, and at all times mentioned herein a resident of Clark County, Nevada.

2. Defendant, Florida Coastal School of Law, Inc., is now and at all times mentioned herein a corporation organized under the laws of the State of Delaware with its principle place of business in Jacksonville, Florida.

IV PRIOR HISTORY:

3. On January 20th., 2015 Plaintiff filed a complaint against defendant in Justice Court, Las Vegas Township, in Clark County Nevada.

4. On February 5th., 2015 defendant filed a Motion to Dismiss that law suit based on the lack of personal jurisdiction, subject matter jurisdiction and improper service.

5. On February 23rd., 2015 plaintiff filed an Opposition to defendant's Motion.

6. On March 4th., 2015 a hearing was held in Department 7, and **the Court found it had both personal and subject matter jurisdiction** but found service to be improper since defendant was served by certified mail rather than personal service. As a result, the court dismissed the action without prejudice and advised the plaintiff to re-file his complaint and serve the defendant properly.

7. On March 23rd., 2015 plaintiff began the complaint process all over again by serving defendant with a demand letter by certified mail as required by the court.

8. On April 1, 2015 knowing that plaintiff's complaint was forth coming, defendant filed a declaratory complaint against plaintiff in the County Court, Fourth Judicial Circuit in Duval County, Florida.

V STATEMENT OF FACTS:

9. On January 21, 2014, plaintiff received an email offering him the opportunity to enroll in defendant's AAMPLE program. The offer went on to explain that this was an alternative way of admission to their law school. Defendant further promised that upon passing the program, plaintiff would automatically be admitted to their law school as a full time JD student.

10. Also on January 21, 2014, plaintiff accepted defendant's offer (contract) via email to participate in their AAMPLE online program.

11. On January 26, 2014, plaintiff paid defendant the tuition and administrative fee requested using his bank debit card drawn on a Nevada bank account.

12. Orientation began the week of February 17th., 2014, from his home in Las Vegas, Nevada.

13. During that week plaintiff was told by the defendant that it would be advisable to cease all work activities during this period, because the classes tend to be very difficult. Taking this advice, plaintiff stopped all business related activities for the next eight weeks which resulted in significant lost income.

14. During this same orientation week, plaintiff was given a choice of taking the final exams at defendant's campus in Jacksonville, Florida or at its sister campus in Phoenix, Arizona. Plaintiff chose to take the exams in Jacksonville so he could explore the school's campus where he expected to attend in the fall.

15. Plaintiff was also told by the defendant during this orientation session that to pass the AAMPLE program a student needed to achieve a minimum grade of 2.0 in each of the two final exams, with a total grade point average of 2.25 or better. Each of the two exams would consist of 25 multiple choice questions and two essays and students would be given three hours to complete each exam.

16. On February 24th., 2014, plaintiff began the program by participating in both the 4th Amendment & Negotiable Instruments classes, each class met online twice a week for five consecutive weeks. Each class had approximately eighteen students and one professor and conducted via live on-line interactive video. Plaintiff attended all classes.

17. On March 26, 2014 plaintiff arrived at his hotel in Jacksonville, Florida nearly a week before the first scheduled exam in order to study with other AAMPLE students.

18. On Wednesday, April 2nd., 2014, plaintiff arrived at the campus test site well prepared to take his first final exam, which was scheduled to be on the subject of the 4th Amendment. Just prior to beginning the exam plaintiff was told to open his laptop computer and login to his ExamSoft account. This account was the same one previously used for quizzes.

19. Before taking the exam, plaintiff was given a manila envelope containing a blue book with the exam questions along with an answer sheet and two other pieces of paper and was told to place his ID number on each. Which he did.

20. The following instructions were sent to plaintiff prior to arriving at the test site. It's highly recommended that you download each exam to your laptop prior to coming to the campus as this will save valuable time. Each exam consists of two (2) essays and 20 – 25 multiple choice questions. Each essay is worth 1/3 of

your grade and the multiple choice as a whole count 1/3 of your grade. Questions are randomized, meaning the essays are mixed with the multiple choice. You can do the questions in any order you choose. Exams are not graded on a curve.

21. There was no mention of a bluebook or that the questions would be different from the book to the software.

22. The following is a portion of a letter written by plaintiff to the defendant immediately after the exam: Just to say "the questions are randomized", does not cover it. This was a mistake that could have easily been avoided with the proper disclosure or better yet, by matching the questions in the book with those on line.

23. When the proctor told him to begin, plaintiff began by starting with the multiple choice questions which were contained in the bluebook. He read the question, and then placed his answers directly into the ExamSoft software. After completing nearly all the questions, plaintiff realized the questions in the book were different than those contained in the ExamSoft software.

24. Plaintiff immediately notified the proctor (Professor DeVitto) who confirmed the problem but offered no solution. Having no other choice, plaintiff began the exam over costing him nearly an hour of valuable time. This caused plaintiff to be short nearly an hour of valuable time to complete the essays.

25. Once the allotted exam time had expired, plaintiff was told by the defendant to go online and upload his answers from the ExamSoft.

26. Upon exiting the exam room plaintiff immediately notified the defendant's administrator of the program. His only comment at that time was that plaintiff should have begun the exam with the essays instead of the multiple choice. Plaintiff asked how that would have made a difference. He did not respond.

27. On Friday, April 4th the second final exam was given this time for Negotiable Instruments with the same instructions. However, this time plaintiff did not use the bluebook but went directly to ExamSoft software, read the questions and posted his answers.

28. Also on Friday, April 4th., immediately after the second exam was over, plaintiff and a fellow student (Michael Haines) went to visit Professor DeVitto in his campus office. It was during this time that plaintiff brought up the subject of what had happened to him during the 4th Amendment final exam. It was then, that

Professor DeVitto stated that "it had occurred before and he had warned the administration that it could lead to a problem down the road." Instead of correcting it the defendant chose to fraudulently cover it up.

29. On information and belief, plaintiff believes there are other prior AAMPLE participants who have suffered this same fate at the hands of the defendant and plaintiff will make all efforts to locate these individuals through the discovery process.

30. On information and belief plaintiff believes, in order to save money defendant chose not to reprint the bluebook when the exam was changed. Plaintiff also believes that nearly all students were under the age of thirty and consequently more adept at technology and therefore nearly always chose the online exam over the use of the bluebook. This in turn would give defendant a reason to save money by not reprinting the book.

31. On April 24, 2014, while at home in Las Vegas plaintiff received an email from defendant stating the results of the final exams were available on line. Upon logging in, plaintiff discovered his exam grades were 1.83 in the 4th Amendment and 2.67 in Negotiable Instruments with an overall grade point average of 2.25. Based on these scores he had failed the AAMPLE program since his grade in the 4th Amendment final fell below 2.0 required.

32. It is clear plaintiff's failure to pass the AAMPLE program was the fault of the defendant due to the negligent and fraudulent manner in which they handled the administration of the final exam.

33. On July 25th., 2014, in attempt to settle this plaintiff discovered through defendant's attorney Mark Alexander, that he had passed the multiple choice portion of the exam but failed the essay part. Mr. Alexander also acknowledged that plaintiff had used the bluebook, but not the answer sheet and provided a copy of that book by email.

34. Plaintiff's failure was due to defendant's negligence which caused him to lose nearly an hour of exam time necessary to complete the essays in a more effective manner.

35. Defendant knowingly and without any disclosure gave an exam bluebook containing questions that did not match the questions in the ExamSoft software

which was used by the defendant to grade the final exam. The defendant chose not to disclose this which resulted in a deliberate act of fraud upon plaintiff.

36. This could have easily been avoided by proper disclosure or by reprinting the blue book with questions that matched those contained on the software. Instead, defendant chose to cover it up. Considering plaintiff's loss of time, his overall grade point average for both exams amounted to 2.5, an amount which was above the amount needed to pass the AAMPLE program.

37. This wrongful act committed by defendant caused further harm by not allowing the plaintiff who is now over 73 years of age and according to defendant's contract now barred from participating in any other AAMPLE program for two years.

38. Plaintiff has made numerous attempts to remedy this by reaching out to defendant AAMPLE program administrator Kem Siddons, Dean, Chidi Ogene, as well as defendant's president Dennis Stone, all of which have chosen to ignore the issue.

VI CAUSE OF ACTIONS

COUNT 1
NEGLIGENCE

39. All of the foregoing allegations are incorporated at this point as though fully set forth in detail.

40. Defendant knew that the questions in the bluebook they distributed did not match the questions in the ExamSoft software and as a result of defendant's negligence plaintiff suffered irreparable harm both monetarily and emotionally.

41. Although defendant had previously been made aware of the problem they chose not to correct it.

42. As a direct result of the foresaid, plaintiff sustained losses and other damages in a sum to be determined at trial.

COUNT 2

BREACH OF CONTRACT

43. All of the foregoing allegations are incorporated at this point as though fully set forth in detail.

44. On January 26, 2014 plaintiff consummated a written contract with defendant giving way to participation in their AAMPLE program which was suppose to lead to admission in their JD program.

45. Also on January 26th., 2014, plaintiff paid defendant their required tuition along with an administration fee using his bank debit card drawn on a Nevada bank account.

46. On January 28th., 2014 plaintiff signed a contract (via email) which was acknowledged by defendant.

47. Defendant breached that contract when they deliberately administered their final exam program knowing there was a significant problem between the written exam questions and those which were online but deliberately failed to disclose the problem to the plaintiff.

48. This deliberate breach of contract by defendant caused plaintiff irreparable emotional as well as economical hardship.

49. As a direct result of the foresaid, plaintiff sustained losses and other damages in a sum according to proof at trial.

COUNT 3
FRAUD

50. All of the foregoing allegations are incorporated at this point as though fully set forth in detail.

51. Although defendant was aware that the questions in the written exam were different than the questions contained in the online software that was required defendant deliberately concealed it from plaintiff instead of disclosing the discrepancy or fixing the problem.

52. As evidenced by Professor DeVitto's statement to plaintiff that the same problem had occurred before and he had warned the administration that it could lead to a problem down the road.

53. The act was malicious, fraudulent and oppressive, justifying an award of punitive damages so that defendant will not engage in such conduct in the future and make an example of them.

COUNT 4

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

54. As a result of defendant's fraud and deceit, and the facts alleged herein, plaintiff was damaged

55. Plaintiff is 73 years old and suffers from loss of sleep, headaches and gastrointestinal issues due to the wrongful acts of the defendant. These wrongful acts caused plaintiff to be declined admission to defendant's law school program due to no fact of his own, but for the wrongful act of another and in this case the defendant.

56. As a direct result of the foresaid, plaintiff sustained losses both monitory and emotional as well as other damages in a sum according to proof at trial.

VII PRAYER FOR RELIEF

57. Plaintiff respectfully requests this Court issue an order directing defendant to admit plaintiff as a full time student to their JD program on a full academic scholarship as partial punishment for deliberately breaching their contract and defrauding plaintiff.

58. For actual and compensatory damages to be proven at trial.

59. For punitive damages in an amount sufficient to punish defendant and deter others from like conduct:

60. For costs

61. Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Dated; April 6th., 2015

Barry Michaels
43 Diamond Run Street
Las Vegas, Nevada 89148
In Pro Per
(702) 415-0905
nevadaonly@yahoo.com